7))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 447 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRABHAI @ BHANO NAVNITLAL JAYSWAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 447 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

RULE SERVED for Respondent No. 1,2

MR AY KOGJE, AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/06/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 13-12-2003, by which the petitioner is detained under P.A.S.A., as a "bootlegger". Along with the said order, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about four criminal cases pending against the petitioner. All these cases are registered under the Bombay Prohibition Act. After considering the material on record, the detaining authority has passed the aforesaid detention order.

2) Mr.Prajapati, learned advocate for the petitioner submitted that four cases are registered against the petitioner but no statement of any witness is recorded. It is submitted by the learned advocate for the petitioner that there is a delay of about three months in passing the detention order. It is also submitted that in connection with one criminal case the petitioner has preferred Criminal Misc.Application No.9619/2003 before this Court and he was released by this Court on 24-11-2003. This aspect is also referred to in para 4 of the detention order. Mr.Prajapati, learned advocate for the petitioner submitted that the bail application preferred by the detenu before this Court is not made available to the detenu in spite of his demand. He has argued that it is a very vital document and the same is withheld, therefore, on that very ground of non-supply of vital document, the order of detention is required to be set aside.

3) Mr.Kogje, learned AGP has submitted that since the petitioner was absconding, delay of about three months in passing the detention order is not fatal to the detention order. Mr.Prajapati submitted that he is restricting his argument only qua non-supply of vital document. To substantiate his say, Mr.Prajapati has relied upon the decision of the Apex Court rendered in the case of Abdul Sattar Ibrahim Manik Vs. Union of India & Ors., reported in AIR 1991 SUPREME COURT 2261. In the said case, Supreme Court has considered the aspect of detaining a person even though he is in judicial custody and after relying on the decision reported in AIR 1991 SC 1640, Supreme Court has held in sub-para (6) of para 12 as under :

> "12 (6).In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be vital ground for ordering detention. In such a case the bail application and the order

granting bail should necessarily be placed before the authority and the copies should be supplied to the detenu."

4) It is no doubt true that the petitioner was released on bail by this Court and copy of said bail application was not made available to the petitioner, even though, in his representation, the petitioner has made a demand to supply the copy of that bail application. As per the judgement relied on by Mr.Prajapati, since the petitioner was released on bail, order granting bail as well as the bail application moved by the detenu is required to be given to the detenu. It is not in dispute that the petitioner was not supplied with the bail application, which he has preferred in this High Court. On this limited ground of withholding an important document, which is referred in the order of detention, the order of detention is required to be set aside.

5) For the aforesaid reasons, this petition is allowed. The order of detention dated 13-12-2003 is quashed and set aside. The detenu, Shri Rajendrakumar alias Bhano Navnitlal Jayswal is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
/malek